

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 941/CHNY/2019

निर्धारण वर्ष/Assessment Year: 2009-10

The Income Tax Officer,
Ward-2,
Tiruchengode.

Shri C. Gopalan,
Vs. M.K. Palayam,
Vadugapalayam PO,
Mallasamudram,
Tiruchengode Taluk,
Namakkal District – 637 503.

(अपीलार्थी/Appellant)

PAN: AFQPG 0559M

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, CIT
: Shri P.M. Kathir, Advocate
for Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 05.12.2022

घोषणा की तारीख/Date of Pronouncement : 05.12.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals), Salem in Appeal No.E-24/2016-17 dated 29.01.2019. The assessment was framed by the ITO, Ward-5, Namakkal for the assessment year 2009-10 u/s.143(3)

of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 10.11.2016.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of transport hire charges paid by the assessee without deduction of TDS u/s. 194C of the Act by invoking the provisions of s. 40(a)(ia) of the Act made by the A.O amounting to Rs. 86,68,168/-.

3. At the outset, the Ld. counsel for the assessee drew our attention to application filed under Rule 27 of the Income Tax Appellate Rules, 1963 (hereinafter 'the Rules') supporting the order of the CIT(A) on the ground decided against him vide application dated 22.07.2022. The Ld. counsel for the assessee stated that the original assessment in the assessee's case was completed u/s 143(3) of the Act vide order dated 28.10.2011. Subsequently, notice u/s 148 of the Act was issued on 22.03.2016. Vide order u/s. 143(3) r.w.s 147 dated 10.11.2016, the AO disallowed an amount of Rs. 86,68,168/- u/s 40(a)(ia) of the Act, for non deduction of TDS on transport hire charges. Aggrieved, the assessee filed an appeal before CIT(A) challenging the jurisdiction of the A.O to reopen u/s. 147 of the Act as well as on merits of the addition. The CIT(A), by the impugned order, dismissed the grounds relating to jurisdiction to

re-open. However, he deleted the disallowance on merits. Aggrieved, the Revenue is now before this Hon'ble Tribunal. The assessee supports the order of the CIT(A) on the aspect of jurisdiction of the AO to re-open the assessment invoking Rule 27 of the Rules. The order of the CIT(A) deleting the disallowance is liable to be confirmed. The assessee raised the following grounds:

1. *The CIT(A) erred in upholding the jurisdiction of the AO to re-open the assessment for this A.Y beyond 4 years in the absence of any allegation of non-disclosure as required in the 1st Proviso to Sec. 147 of the Act. Reliance is placed on the decision of the SC in **CIT Vs. Kelvinator of India (320 ITR 561)**. For a fact the CIT(A) himself specifically records in para 8, page 8 of his order:*

"8.....In the instant case, there was no failure on part of the appellant to disclose truly and fully the material facts."

2. *In fact, this very issue was considered by the AO in the original scrutiny proceedings itself and no disallowance was resorted to. It is clearly a change of opinion. It is now trite law that reopening based on change of opinion is liable to be quashed. In the recent decision of **ITO Vs. Techspan (I) Pvt. Ltd (302 CTR 74)**, the Hon'ble SC has once again reiterated that reopening based on change of opinion is untenable.*

3. *The reasons for re-opening (**Annexure**), only states that the payments have been effect without making TDS and hence there is a failure to fully and truly disclose material facts. Here it is submitted that these payments were very much a part of the accounts and hence there is absolutely no failure on part of the Assessee to fully and truly disclose material facts."*

4. The Ld. counsel for the assessee drew our attention to the order of CIT(A), wherein the CIT(A) has dismissed this ground of reopening by observing in para 6.2 & 6.3 as under:

"6.2. In the written submissions filed at the time of appellate proceedings the appellant argued that there was no failure on the appellant's part to disclose fully truly all material facts. The Assessing Officer contended that the assessee did not furnish any return in response to notice u/s 148

issued to him. The assessee also did not comply to the notice u/s 143(2). The appellant has, in the Written Submissions simply argued that he has complied with all the provisions of the Act and that he has disclosed fully and truly all materials facts at the time of assessment proceedings. And that the Assessing Officer was not correct in holding that full materials were not disclosed. The appellant also argued that the reopening made after four years is therefore unlawful.

6.3. I have gone through the record and submissions filed by the assessee. I do not find any merit in the arguments of the assessee. The Hon'ble Supreme Court in CIT Vs. Raman & Co., 67 ITR 11 has observed as follows

QUOTE:

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..... but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on record, or the facts disclosed thereby or from other inquiry, or research into facts or law, but was not obtained, the jurisdiction of the Assessing Officer is not affected.

.....
.....
UNQUOTE:

6.4. In an earlier part of the same judgment it is stated that 'information' means 'instruction or knowledge derived from an external source'. But these words cannot be construed as implying that the source must be outside the record; the observations quoted above clearly lay down that the information may be gathered from the assessment record itself. Information as to subsequent events which bring to light material circumstances unknown but existing at the date of the original assessment would equally justify a reassessment under this section. Hence, this ground of the appeal is dismissed."

5. The Ld. counsel for the assessee stated that this ground was very much before Ld. CIT(A) and now he want to support the order of Ld. CIT(A) on this ground also.

6. On query from the Bench, the Ld. Sr. D.R could not controvert the above fact situation and hence, the ground raised under Rule 27 of the Rules is admitted and being adjudicated upon.

7. The brief facts relating to the above jurisdictional issue for reopening of assessment are that the relevant Assessment Year

involved in Assessment Year 2009-10 and original Assessment Year was completed under scrutiny assessment u/s. 143(3) of the Act vide order dated 28.11.2011. Subsequently, the A.O recorded the reasons for issuance of notice u/s. 148 of the Act vide dated 05.01.2017, which are enclosed in assessee's Paper Book at Page No.101 and the relevant reasons read as under:

"The assessee has made given payments to the tune of Rs.86,68,168/- for Transport hire charges without deducting TDS, Hence, the non deduction of TDS payment on transport hire charges is to be fully disallowed under section 40(a)(ia) of the IT Act, As the failure on the part of the assessee to disclosure full material facts. For the above reasons the income has chargeable to tax and escaped assessment for the Asst Year 2009-10 within the meaning of section 147 of the Income Tax Act 1961."

8. The Ld. counsel for the assessee stated that the original assessment was completed u/s. 143(3) of the Act vide order dated 28.10.2011 and reopening u/s. 148 of the Act was done on 22.03.2016 by issuing notice u/s. 148 of the Act, which is clearly beyond four years. According to Ld. counsel, in the present case the proviso to s. 147 of the Act applies. The Ld. counsel for the assessee stated that during original assessment proceedings, the A.O has examined the issue of labour charges and the relevant noting by A.O in his order and labour charges and disallowance of Rs. 3,00,000/- on adhoc basis is also recorded. The A.O recorded this fact in his assessment as under:

"In response to the hearing notice, the authorized representative Shri.A.P.Nachimuthu, F.C.A., and the assessee Shri.C.Goplan appeared on various dates and the case was discussed. During the course of

hearing, the assessee was asked to produce books of accounts, bank statement and evidence for the claimed. The assessee produced Books of accounts, Bank Statements, and evidence for expenses claimed. The same were examined. The expenses claimed under the head of Labour Charges is fully supported by self made vouchers only. Hence, after having discussion with the assessee and the assessee's authorized representative, disallowance of Rs.3,00,000/- is made under the head of Labour Charges."

9. The Ld. counsel for the assessee drew our attention to the details of Lorry higher charges submitted during the course of original assessment proceedings and filed the details now before us vide various letters and the relevant details are as under:

S. No.	Date	Documents	Page No.
1.	31.03.2009	Challans for payments of TDS for K.P. Manickam and M. Balasubramaniam and Forms 16A	30-36
2.	28.10.2011	Covering Letter and Ledger Account of Balu Transport	37-68
3.	28.10.2011	Covering Letter and Ledger Account of K.P.M Lorry Service	69-96

We noted the entire higher charges which are examined by the A.O during the course of original assessment proceedings. When these facts were confronted to Ld. Sr. D.R, he could not rebut the same.

10. After hearing the rival contentions and going through the facts of the case, we are of the of view that the assessee's case originally was scrutinized u/s. 143(3) of the Act for the relevant Assessment Year 2009-10 and complete detail in regard to lorry higher charges were examined by A.O and filed by the assessee. Subsequently, admittedly beyond four years, a notice u/s. 148 of the Act for

reopening of the assessment on the same reasons, as noted above, was issued vide dated 22.03.2016. We have gone through the reasons and noted that there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for this assessment for the relevant Assessment Year 2009-10 and admittedly assessment is reopening beyond four years. Originally, assessment was u/s. 143(3) of the Act. Every aspect in regard to lorry higher charges were examined. In view of these facts, we are of the view that the reopening is bad in law and hence, quashed. The appeal of the Revenue is dismissed on the issue of reopening. As regards to merits of the case, since we have adjudicated the issue of reopening raised by the assessee under rule 27 of the Rules, we need not to go into the merits of the case. Thus, the appeal of the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 5th December, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 5th December, 2022

EDN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त) अपील(/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT